RSA 189/2006
BEFORE
THE HON'BLE MR JUSTICE H.N. SARMA

Heard Mr. R.K. Saikia, learned counsel for the appellant and also heard Mr. B.C. Talukdar, learned counsel for the respondent.

The concurrent findings arrived at by the learned trial court as well as the appellant court in deciding Title Suit No. 95/03 and in Title Appeal No. 63/05 vide Judgment and Decree dated 30.6.05 and 28.6.06 is the subject matter of this Second appeal.

The appellant/defendant is the husband of the plaintiff/respondent. The parties are being separated by a decree of Divorce. The respondent/wife instituted Title Suit No.95/03 praying for declaration of right, title and interest over the suit land measuring 1K . 10L. of land covered by Dag No.2212 of K.P. Patta No. 368 of Sahar Guwahati along with two structures standing thereon and for delivery of khas possession thereof by removing the defendant and the men and materials from the suit property.

The crux of the plaint of the plaintiff/respondent is that the plaintiff/wife is the owner of the schedule land and from the date of purchase, the schedule land stands in her name and she also paid the consideration money. The defendant on the other hand alleged that the consideration money was paid by him and in fact contested the pleaded case that the suit property was purchased under 'Benami' transaction in the name of the wife/plaintiff.

The learned trial court on the basis of the pleadings as well as the evidence adduced by the parties, has found that the plaintiff has got the right, title and interest over the suit land and she is also entitled to recovery of possession and accordingly decreed the suit in her favour. It is carried to the Title Appeal No. 63/05 where the learned First Appellant Court concurred with the decision of the learned trial court.

Challenging the impugned judgment and decree the appellant raised the following substantial question of law:
\Whether the learned courts below committed wrong in holding that the claim of the defendant(husband) is barred y/s 4 of the Benami Transactions (Provision) Act, 1988 although Section 3 of the said Act exempt the provision of Benami Transaction in respect of wife or daughter?\

Mr. Saikia in support of the above contention submits that in the instant case the defendant/appellant came out with a different case that he is the owner of the suit property and against which he purchased the same by paying consideration money on his own. But the plaintiff having failed to prove the fact that the consideration money was paid by her, the learned court below erred in law in passing the impugned judgment.

It is further submitted that in such a case the provision of Section 3 of the Benami Transaction (Provision) Act, 1988 could not be applicable.
I have considered the submission made by the learned counsel for the appellant. It is pleaded case of the defendant/appellant that the suit property was purchased by him under Benami Transaction in the name of his wife. Section 3(2)(a) provides that the prohibition of Benami Transaction was not applied to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter. It is the case of the respondent that the appellant has failed to prove \the contrary is proved' to the effect that it was not purchased for the benefit of wife or unmarried daughter. Rather it is the case of the defendant/appellant that he purchased the property in the name of his wife by paying the consideration money on his

own. In consideration of the provision of Act, the applicability of the Act, pa yment of consideration money has not been made a criteria to come out with the p rohibition contained in the Act. That apart, it is not the case of the plaintif f that he falls within the exemption of Section 3(2)(a) of the Act.

In view of the above, the substantial question of law as sought to be ra ised by Mr. Saikia does not emerge from the facts of the instant case.

Hence, this Second appeal is devoid of merit and stands dismissed.